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Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-939

WILLIAM FRED DOWELL
Petitioner

—vs—

AETNA LIFE INSURANCE COMPANY
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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October Term, 1972

No. 72-1405

WILLIAM FRED DOWELL
Petitioner

—vs—

AETNA LIFE INSURANCE COMPANY
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

IN THE SUPREME COURT OF THE UNITED STATES

THE PETITIONER, WILLIAM FRED DOWELL, petitions the Supreme Court for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit to review the Judgement and mandate of that court affirming, in part, the judgement of the United States District Court of the Middle District of North Carolina.

OPINION BELOW

The Judgment of the Court of Appeals for the Fourth Circuit (Petitioner's Appendix I) is not yet reported.

JURISDICTION

The Judgment of the Court of Appeals for the Fourth Circuit sought to be reviewed was entered on October 31, 1972. The jurisdiction of this court is invoked pursuant to Title 28 U S C Section 1254.

QUESTIONS PRESENTED

1. Under a policy or certificate of disability insurance wherein the petitioner is entitled to disability benefits thereunder and said policy or certificate provides for certain credit to the insurance company with regard to social security benefits, is the insurer entitled to credit for social security benefits received by petitioner's wife and child, who are not parties or insureds under the insurance of the disability policy and where the said policy does not specifically provide for credit to the insurance company for said payments to petitioner's wife and child?

2. Under a policy or certificate of disability benefits wherein the insurer is entitled to a certain credit with regard to Workmen's Compensation benefits, does said credit extend to payment of medical bills paid by petitioner's employer on behalf of the insured who was injured and rendered totally and permanently disabled while working for his employer?

STATEMENT OF THE CASE

The petitioner was employed by High Point Sprinkler Company and as such employee he was entitled to and did receive a certificate of long term disability benefits issued by Aetna Life Insurance Company to High Point Sprinkler Company on behalf of the employees of said company. A copy of said group insurance certificate is petitioner's Exhibit 2 as set forth in the Appendix. The certificate insured petitioner with respect to total and permanent disability. Under the certificate the petitioner was entitled to monthly benefits of $507.00 per month; however, the insurer (the respondent) is entitled to certain credits on said monthly stipend. The relevant provisions of said certificate of insurance as it relates to said credits are as follows:

"(1) 65% of the amount of any remuneration the Employee receives from any employer for work performed in connection with an approved rehabilitation program;

(2) the amount of any other remuneration the Employee receives from any Participant Employer, or from any other employer;

(3) the amount of any benefit provided with respect to a disability
   (a) under any employer plan or labor-management plan or union welfare plan or employee benefit organization plan providing benefits for loss of time from work because of disability; and
   (b) under any fund or other arrangement providing benefits for loss of time because of disability pursuant to any compulsory benefit acto or law;

(4) the amount of any income the Employee receives under a retirement plan covering employees of any Participant Employer;

(5) any payment under group life policy (whether issued by the Insurance Company or other insured) for a disability

which commenced after the effective date of the Employee insurance under the group policy;

(6) the amount of any income the Employee receives under any unemployment compensation law;

(7) the amount of any income the Employee receives by reason of early retirement, other than because of disability under the Federal Social Security Act, or the Railroad Retirement act; and

(8) any payment under the Federal Social Security Act or the Railroad Retirement Act, or by the Veterans Administration or any federal, state, municipal, or other governmental agency or pursuant to any workmen's compensation law, occupational disease law, or any other legislation of similar purpose, or the maritime doctrine of maintenance, wages, and cure, for a disability which commenced after the effective date of the Employee's insurance under the group policy."

The District Court held (affirmed by the Court of Appeals) that the respondent was entitled to credit on the monthly stipend received by petitioner's wife and child from the Social Security Administration. The District Court held further (affirmed by the Court of Appeals) that respondent was entitled to credit for the amount paid by the employer for the medical treatment rendered to the petitioner who became totally and permanently disabled while actually working for his employer.

FEDERAL JURISDICTION

The jurisdiction of the United States District Court for the Middle District Court of North Carolina was invoked pursuant to Title 28 U S C, Section 1332. This statute is more commonly known as the Diversity of Citizenship Statute. No question has ever been raised in any court below as the Federal Jurisdiction.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

The decision of the Court of Appeals is in conflict with the decision of the Supreme Court of North Carolina with regard to the interpretation of insurance contracts in the following decisions:

Roberts v. American Alliance Insurance Company, 212 N C 1, 192 S E 873;

Barker v. Insurance Company, 241 N C 397; 85 SE 2d 305;

Henderson v. Indemnity Company, 268 N C 129; 150 S E 2d 17.

The law of North Carolina which is controlling in this diversity case and which appears to be the general rule throughout the United States is as set forth in *Roberts v. American Alliance Insurance Company, supra:*

> "Policies of insurance, like all other written contracts, must be construed and enforced according to their terms. If they convey a plain, practical meaning, that meaning must be carried into effect. Policies of insurance differ somewhat from other contracts, however, in respect to the rules of construction to be applied to them. They are unipartite. They are in the form of receipts from insurers to the insured, embodying covenants to compensate for losses described. They are signed by the insurer only. In general, the insured never sees the policy until after he contracts and pays his premium and he then most frequently receives it from a distance, when it is too late for him to obtain explanations or modifications of the policy sent him. The policy, too is generally filled with conditions inserted by persons skilled in the learning of the insurance law and acting in the exclusive interest of the insurance company. Out of these circumstances the principle has grown up in the courts that these policies must be construed liberally in respect to the persons insured, and strickly with respect to the insurance company. See *Insurance Co. v. Wilkinson*, 13 Wall (80 US) 232."

The petitioner respectfully contends that the provisions in the certificate of insurance relied upon the Court below to sustain the credit allowed to the respondent with regard to the amounts received by petitioner's wife and child from the Social Security Administration do not dictate such allowance but quite to the contrary provide only a credit with regard to payments received by petitioner under the Social Security Act. The respondent insurance company was the author of the policy and, if such language had been intended, would have in express language provided for the same. No such language is set forth in the provisions of the certificate.

It is, therefore, the contention of the petitioner that under the law of the construction of the insurance policies as set forth hereinabove in the Petition that a reasonable interpretation of the policy does not include the credits complained of and allowed by the courts below.

This is a case of serious importance in any court of the United States, State or Federal. There are no decisions which counsel for either party nor the courts below have found which are directly in point and which have interpreted a policy or certificate of disability insurance with respect to the credits involved. Under present day notions of fairness and in order to guide other courts in the interpretation of a policy of similar importance, it is in the interest of justice that the court allow the writ and hear this case.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

NO. 72-1405

WILLIAM FRED DOWELL,

Appellant

vs.

AETNA LIFE INSURANCE COMPANY,

Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, Wilkesboro Division. Eugene A. Gordon, District Judge.

(Argued September 15, 1972 Decided October 31, 1972)

Before SOBELOFF, Senior Circuit Judge, WINTER, Circuit Judge, and THOMSEN, Senior District Judge

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Larry S. Moore and John E. Hall (Moore and Rousseau and McElwee and Hall on brief) for Appellant, and Allan R. Gitter (Womble, Carlyle, Sandridge and Rice on brief) for Appellee.

Thomsen, Senior District Judge

Plaintiff appeals from a decision of the district judge, sitting without a jury, which allowed defendant-appellee certain credits against payments to plaintiff under a group policy. The policy has been issued by defendant to the corporation which employed plaintiff unti January 13, 1966, when he received an injury in the course of his employment, which has totally disabled him since that date.[1] Defendant had issued to plaintiff a "Group Insurance Certificate Long Term Disability Benefits," which set out in detail plaintiff's rights under the group policy.

The provisions pertinent to the issued raised by

1/ Defendant conceded that plaintiff was totall disabled during the first 24 months after the accident, but denied that he met the standard of total disability which applies after the firs 24 months. The district court decided this issue in favor of plaintiff and defendant has not appealed.

this appeal are:

"Monthly Benefit: The amount of monthly benefit, as of any given time prior to age sixty-five, will be an amount equal to the excess, if any, of 65% of the Employee's monthly rate of basic earnings over the amount, if any, of other income benefits payable for the same monthly period, but the amount of monthly benefit shall not, in any event, be more than $1,000.

" * * *

"C. Other Income Benefits referred to on Page 1 of this Certificate[2] shall include:

"(1) 65% of the amount of any remuneration the Employee receives from any employer for work performed in connection with an approved rehabilitation program;

"(2) the amount of any other remuneration the Employee receives from any Participant Employer, or from any other employer;

" * * *

"(4) the amount of any income the Employee receives under a retirement plan covering employees of any Participant Employer;

" * * *

"(7) the amount of any income the Employee

2/ i. e., in the paragraph quoted above, headed "Monthly Benefit".

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receives by reason of early retirement, other than because of disability, under the Federal Social Security Act, or the Railroad Retirement Act; and

"(8) any payment under the Federal Social Security Act or the Railroad Retirement Act, or by the Veterans Administration or any federal, state, municipal, or other governmental agency or pursuant to any workmen's compensation law, occupational disease law, or any other legislation of similar purpose, or the maritime doctrine of maintenance, wages and cure, for a disability which commenced after the effective date of the Employee's insurance under the group policy."

Plaintiff did not dispute and the district judge allowed the credits claimed by defendant for the amount paid to plaintiff as temporary total disability under the North Carolina Workmen 's Compensation Act, and for all disability benefits paid to plaintiff himself under the Social Security Act. Plaintiff did dispute the credits claimed by defendant and allowed by the district judge for (1) the amounts paid to plaintiff under the Workmen's Compensation Act for permanent partial disability and the amounts paid to him or on his behalf under that Act for medical expenses resulting from his injury and disability, (2) the benefits paid to his wife and children under the

Social Security Act because of his disability, and (3) the sum of $2,502.56 paid to plaintiff from his employer's profit sharing plan.

(1) Provision C(8) of the policy, quoted above, includes among "Other Income Benefits for which defendant is entitled to a credit: "any payment * * * pursuant to any workmen's compensation law * * * for a disability which commenced after the effective date of the Employee's insurance under the group policy." This language is unambiguous, and clearly entitles defendant to the credits claimed for compensation paid to plaintiff for permanent partial disability, and for medical expenses pai pursuant to the Workmen's Compensation Act as a result of plaintiff's injury and disability. Provision C(8) is not limited to amounts the employee himself receives, as are, for example, Provisions C(1) and (2).[3]

(2) Provision C(8) also clearly include among

3/ The applicable rules of construction are discussed in Roberts v. American Alliance Ins. Co., 212 N. C. 1, 192 S. E. 873 (1937). The purpose of the North Carolina Workmen's Compensation Law is discussed in Branham v. Denny & Panel Co. 223 N. C. 233, 25 S. E. 2d 865 (

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"Other Income Benefits" for which defendant is entitled to a credit: "any payment under the Federal Social Security Act * * * for a disability which commenced after the effective date of the Employee's insurance under the group policy." As noted above, the credit under C(8) is not limited to amounts the employee himself receives.[1]

(3) The credit for the amount "paid to plaintiff from his employer's profit sharing plan" presents a more difficult question. The district court found as a fact that plaintiff received from his employer $2,502.56, "which amount was the plaintiff's equity in the profit sharing plan of his employer, High Point Sprinkler Company, which amount the plaintiff was allowed to receive in cash, although he had the option to leave the same with the Company for retirement purposes when he became the age of sixty-five years." The court's conclusion was: "There can be no serious question that benefits received under a

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1/ Compare C(7), which allows credit for income the employee himself receives by reason of early retirement, other than because of disability, under the Federal Social Security Act.

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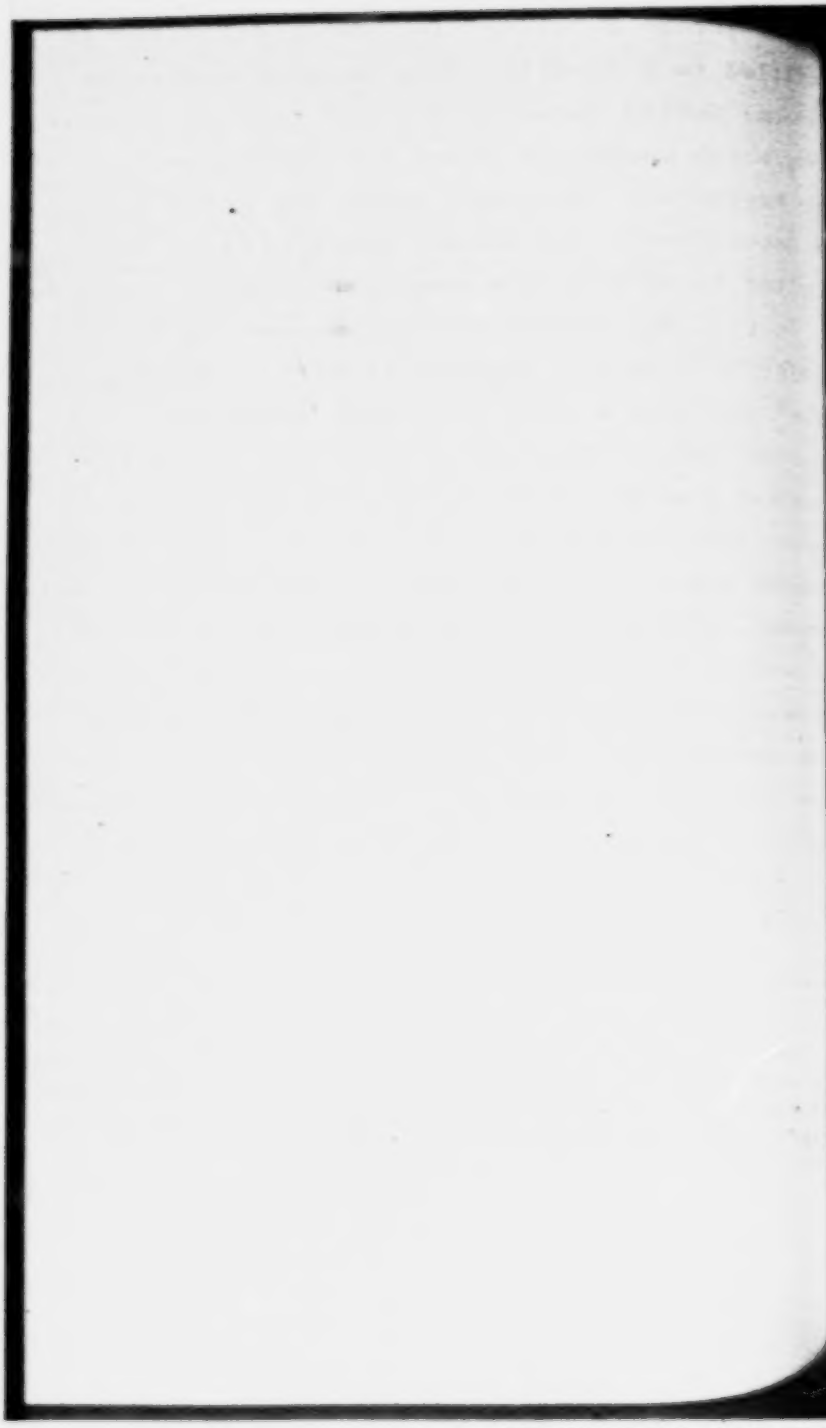

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profit sharing plan constitute income under a retirement plan of an employer. They are certainly a reward or compensation for services rendered rather than a gratuity. As such, they constitute income and are, therefore, deductible by the defendant." There is nothing in the record to show the basis for that finding and conclusion. It does not appear that the profit sharing plan was offered in evidence, or that there was any stipulation with respect to its provisions. Profit sharing plans are of various types and contain various provisions. Such a plan may or may not be part of a retirement plan, within the meaning of Provision C(4).[5] Plaintiff's rights under the plan were evidently the result of his employment before the accident; without knowing more about them we cannot say that they constituted "renumeration" within the meaning of Provision C(2), which is the alternate ground of credit suggested by defendant. We have concluded that we should

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5/ See e. g. Savitz, A Profit Sharing Primer, Lawyer, vol. 14, p. 49 (April 1968).

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remand the case, so that the district judge may receive into evidence the profit sharing plan and any other relevant and material evidence on this one question. The other rulings appealed from are affirmed.

Remanded with instructions

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OCTOBER TERM 1972

NO. ~~72-1405~~
72-939

WILLIAM FRED DOWELL
Petitioner

-vs-

AETNA LIFE INSURANCE COMPANY
Respondent

DEFENDANT'S RESPONSE TO PLAINTIFF'S PETITION FOR WRIT OF CERTIORARI

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IN THE

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OCTOBER TERM 1972

NO. 72-1405

WILLIAM FRED DOWELL
Petitioner

-vs-

AETNA LIFE INSURANCE COMPANY
Respondent

DEFENDANT'S RESPONSE TO PLAINTIFF'S

PETITION FOR WRITE OF CERTIORARI

DEFENDANT AETNA LIFE INSURANCE COMPANY, respectfully submits that the decision by the United States Court of Appeals for the Fourth Circuit, affirming the judgment of United States District Court Judge Eugene A. Gordon, is correct in all respects

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and need not be reviewed upon certiorari. No new or novel questions of law are presented, and the decision simply holds that there is no ambiguity in the terms of the insurance policy in question an that the defendant, by interpretation of the plain wording of the contract, is entitled to certain credits as defined by the policy. This decision is not in conflict with any North Carolina cases an is in accord with several cases from other jurisdic tions dealing with analogous points of law.

Respectfully submitted,

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